

**CHRISTENSEN JAMES & MARTIN**

DARYL E. MARTIN, ESQ.

Nevada Bar No. 06735

WESLEY J. SMITH, ESQ.

Nevada Bar No. 11871

7440 W. Sahara Avenue

Las Vegas, Nevada 89117

Telephone: (702) 255-1718

Facsimile: (702) 255-0871

*Attorneys for Plaintiffs*

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

\* \* \* \* \*

EMPLOYEE PAINTERS' TRUST HEALTH &  
WELFARE FUND; NORTHERN NEVADA  
PAINTERS AND ALLIED TRADES JOINT  
APPRENTICESHIP AND TRAINING TRUST;  
PAINTERS AND ALLIED TRADES LABOR-  
MANAGEMENT COOPERATION FUND;  
PAINTERS HOLIDAY AND VACATION FUND;  
STAR PROGRAM, INC., IUPAT FINISHING  
TRADES INSTITUTE, each acting by and through  
their designated fiduciary, Todd Koch;  
INTERNATIONAL UNION OF PAINTERS AND  
ALLIED TRADES INDUSTRY PENSION  
TRUST FUND, acting by and through its  
designated fiduciary, Gary J. Meyers,

Plaintiffs,

vs.

DA VINCI INTERIORS, LLC d/b/a  
RENAISSANCE DRYWALL, a Nevada limited  
liability company; CHRISTOPHER KIMES,  
individually; GREAT AMERICAN INSURANCE  
COMPANY, an Ohio corporation; PELLETT  
CONSTRUCTION, LLC, a Nevada limited liability  
company; JOHN DOES I-X, inclusive; ROE  
ENTITIES I-X, inclusive,

Defendant.

CASE NO.:

**COMPLAINT FOR BREACH OF  
CONTRACT, INJUNCTIVE  
RELIEF, PERSONAL LIABILITY,  
BREACH OF FIDUCIARY DUTY,  
GENERAL CONTRACTOR  
LIABILITY [N.R.S. 608.150] AND  
DEMAND FOR RELIEF ON  
BONDS [NRS 624.273]**

Date: N/A

Time: N/A

COME NOW the above-named Plaintiffs, the Employee Painters' Trust Health &  
Welfare Fund, Northern Nevada Painters and Allied Trades Joint Apprenticeship and Training  
Trust, Painters and Allied Trades Labor-Management Cooperation Fund, Painters Holiday and

CHRISTENSEN JAMES & MARTIN  
7440 WEST SAHARA AVE., LAS VEGAS, NEVADA 89117  
PH: (702) 255-1718 & FAX: (702) 255-0871

1 Vacation Fund, Star Program, Inc. and IUPAT Finishing Trades Institute, each acting by and  
2 through their designated fiduciary, Todd Koch, and the International Union of Painters and  
3 Allied Trades Industry Pension Trust Fund, acting by and through its designated fiduciary, Gary  
4 J. Meyers, (“Plaintiffs” or “Trust Funds”), and by and through their attorneys, Christensen James  
5 & Martin, and for their causes of action against the above-named Defendants, complain, assert  
6 and allege as follows:

7 **JURISDICTION & PARTIES**

8 1. This Court has jurisdiction of this case pursuant to § 301(a) of the Labor-  
9 Management Relations Act of 1947, as amended [29 U.S.C. § 185(a)] and § 502(e) of the  
10 Employee Retirement Income Security Act of 1974, as amended [29 U.S.C. § 1132(e)(1)].  
11 Pursuant to 28 U.S.C. § 1367, this Court has ancillary jurisdiction over any secondary causes of  
12 action.

13 2. The Trust Funds are express trusts created pursuant to written declarations of trust  
14 (“Trust Agreements”) between the International Union of Painters and Allied Trades, District  
15 Council 16, Painters Union Local No. 567 (hereinafter “Union”) and the employers who have  
16 executed Master Agreements and/or Collective Bargaining Agreements with the Union,  
17 including Da Vinci Interiors, LLC dba Renaissance Drywall. The Trust Funds were created and  
18 now exist pursuant to § 302(c) of the Labor-Management Relations Act of 1947, as amended [29  
19 U.S.C. § 186(c)].

20 3. At all times material herein, the Union has been a labor organization representing  
21 employees in the painting, drywall and decorating industries in Nevada and a labor organization  
22 representing employees in an industry affecting commerce within the meaning of § 301(a) of the  
23 Labor Management Relations Act of 1947, as amended [29 U.S.C. § 185(a)].

24 4. The Plaintiffs are informed, believe and thereon allege that at all times material  
25 herein, Defendant Da Vinci Interiors, LLC dba Renaissance Drywall (“Renaissance”) was a  
26 Nevada limited liability company authorized to and was doing business as a contractor in the  
27 State of Nevada.  
28

1           5.       The Plaintiffs are informed, believe and thereon allege that Renaissance was  
2 formally dissolved on April 1, 2010 and its Nevada State Contractor's license was suspended and  
3 not renewed on March 31, 2010.

4           6.       Plaintiffs are informed, believe and thereon allege that at all times material herein,  
5 Defendant Christopher Kimes ("Kimes") has resided in and is a citizen of the State of Nevada.

6           7.       Plaintiffs are informed, believe and thereon allege that at all times material herein  
7 Defendants Kimes and John Does I-X are members, managers, officers, agents and/or  
8 individuals whose employment duties with Renaissance required decision making regarding the  
9 payment of funds and monies to the Trust Funds.

10          8.       The Plaintiffs are informed, believe and thereon allege that at all times material  
11 herein, Defendants Kimes and John Does I-X were controlling members, managers, officers,  
12 principals and key employees of Renaissance.

13          9.       Plaintiffs are informed, believe and thereon allege that at all times material herein  
14 Defendant Great American Insurance Company ("GAIC") was and is an Ohio corporation  
15 authorized to do business in Nevada as a surety.

16          10.       Plaintiffs are informed, believe and thereon allege that GAIC issued to  
17 Renaissance GAIC's Surety Bond No. FS1376012 in the amount of Fifteen Thousand Dollars  
18 (\$15,000.00) ("Bond"). The Trust Funds believe that additional bonds may have been issued by  
19 GAIC or other insurance/bonding companies to Renaissance or its general contractors. The  
20 Trust Funds reserve the right to amend the Complaint to insert additional charging allegations  
21 against such other bonds and/or companies that issued them.

22          11.       Plaintiffs are informed, believe and thereon allege that the delinquencies  
23 identified herein are properly payable out of the proceeds of the Bond.

24          12.       Plaintiffs are informed, believe and thereon allege that Defendant Pellett  
25 Construction, LLC ("Pellett") was and is a Nevada limited liability company authorized to and is  
26 doing business as a contractor in the State of Nevada.

1           13. The true names and capacities, whether partnership, individual, corporate,  
2 company, associate or otherwise of John Does I-X, inclusive, and Roe Entities I-X, inclusive, are  
3 unknown to the Trust Funds at this time and said Defendants are therefore sued by fictitious  
4 names. The Trust Funds reserve the right to amend the Complaint to insert additional charging  
5 allegations, together with the true identities and capacities, when the same have been ascertained.

6  
7                                   **FIRST CAUSE OF ACTION**

8                                   [Breach of Contract - 29 U.S.C. § 1145 – Renaissance, Kimes, Does I-X and Roes I-X]

9           14. Plaintiffs herein restate and reallege the allegations contained in Paragraphs 1  
10 through 13, as though set forth hoc verba.

11           15. Renaissance executed and delivered a certain Collective Bargaining Agreement  
12 (“CBA”) to the Union whereby Renaissance agreed to be bound by the terms and conditions of  
13 the CBA. Renaissance also agreed to be bound by the terms and provisions of each of the Trust  
14 Agreements utilized to create the Trust Funds. The Trust Funds are intended beneficiaries of the  
15 CBA and the Trust Agreements.

16           16. At all times relevant herein, Renaissance has been obligated to the terms and  
17 provisions of the CBA and the Trust Agreements.

18           17. At all times material herein, Renaissance was obligated by the terms of the CBA  
19 and the Trust Agreements to submit written reports to the Trust Funds on a timely basis showing  
20 the identities of employees performing work covered by the CBA, and the number of hours  
21 worked by or paid to these employees. Further, Renaissance promised that it would pay fringe  
22 benefit contributions to the Trust Funds on a monthly basis and at specified rates for each hour  
23 worked by or paid to its employees covered by the CBA. At all times material herein,  
24 Renaissance was obligated to submit said monthly reports and pay said contributions to the Trust  
25 Funds at their administrative offices on or before the first (1st) day and are delinquent as of the  
26 twentieth (20th) day following each successive work month.

27           18. According to the CBA, Trust Agreements and applicable law, Renaissance must  
28 permit the Trust Funds and their agents to conduct compliance audits of its payroll and related

1 records in order to determine the exact amount of fringe benefit contributions and contract  
2 damages due and owing to the Trust Funds.

3 19. The Plaintiffs caused an Audit to be performed on Renaissance's payroll records  
4 for the period of November 1, 2007 through August 31, 2009 ("Audit Period").

5 20. The Plaintiffs are informed, believe and thereon allege that Renaissance failed to  
6 pay certain fringe benefit contributions and/or contract damages, plus accruing interest,  
7 liquidated damages, attorney's fees and costs as required by the CBA and Trust Agreements  
8 during the Audit period. The Plaintiffs are informed, believe and thereon allege that Renaissance  
9 is delinquent to the Trust Funds for unpaid contributions (\$49,767.37), plus accrued interest  
10 (\$8,590.98), liquidated damages (\$8,590.98), attorney's fees (\$2,423.70) and audit costs  
11 (\$3,016.75), for a total delinquency of \$72,389.78 ("Renaissance Delinquency").

12 21. The Trust Funds are entitled to obtain project and general contractor specific  
13 payroll information necessary to complete the Audit, yet Renaissance has failed and refused to  
14 provide such information to the Trust Funds' Auditor.

15 22. By the CBA, Trust Agreements and 29 U.S.C. § 1132(g)(2), Renaissance agreed  
16 to be and was deemed contractually delinquent when Renaissance failed to remit reports and pay  
17 contributions and/or other contract damages when due. Renaissance is delinquent to the Trust  
18 Funds and is obligated by the CBA and/or Trust Agreement to pay the Trust Funds liquidated  
19 damages and interest on the amounts due. The Trust Funds allege that liquidated damages and  
20 interest are due to the Trust Funds by Renaissance in an amount to be established by proof at trial  
21 herein.

22 23. By the CBA and Trust Agreements, Renaissance also agreed that in the event of  
23 delinquency, it would pay all court costs and/or audit costs incurred in connection therewith,  
24 whether before or after litigation is commenced.

25 24. It has been necessary for the Trust Funds to engage the law firm of Christensen  
26 James & Martin to collect any and all amounts due. Pursuant to the CBA, Trust Agreements and  
27 29 U.S.C. § 1132(g)(2), the Trust Funds are entitled to recover their reasonable attorney's fees.  
28

25. Pursuant to 29 U.S.C. § 1132(g)(2), Renaissance owes the Trust Funds accrued interest at the rates established pursuant to 26 U.S.C. § 6621 on all unpaid contributions and damages from the dates the sums were originally due to the Trust Funds and thereafter, until paid in full. The amount of said interest will be established by proof at trial.

26. Plaintiffs are informed, believe and thereon allege that at all times material herein Defendants Renaissance, Kimes, John Does I-X and Roe Entities I-X, and each of them, were the agent, partner, employee and/or alter-ego of each other, and in doing the things herein alleged, were acting within the course and scope of said agency, partnership or relation, with the permission and consent of their co-defendants, and that each of them were working as a single entity and enterprise.

27. The Trust Funds are entitled to recover from Defendants Renaissance, Kimes, John Does I-X and Roe Entities I-X a sum equal to the Renaissance Delinquency, including any and all unpaid fringe benefit contributions discovered in the audit, plus accruing interest, liquidated damages, attorney's fees, costs of suit and audit costs.

## SECOND CAUSE OF ACTION

[Injunctive Relief -29 U.S.C. § 1132(a)(3) – Renaissance, Kimes, Does I-X and Roes I-X]

28. Plaintiffs herein restate and reallege the allegations contained in Paragraphs 1 through 27, as though set forth *hoc verba*.

29. The Defendants' actions in failing to submit reports, pay required contributions and provide project and general contractor specific payroll information to the Trust Funds' Auditor, as described herein, constitute violations of ERISA [29 U.S.C. § 1001 et seq.].

30. The contract breaches and violations of ERISA identified above harm the Trust Funds and place at risk the Trust Funds' ability to provide required employee benefits to their beneficiaries.

31. The Plaintiffs' remedies at law are not sufficient to adequately compensate the Trust Funds or their beneficiaries from past harm caused by said violations, or to protect them from the harm or threat of harm caused by similar future violations.



1 Fund assets established pursuant to the terms and provisions of the CBA, Trust Agreements and  
2 29 C.F.R. § 2510.3-102:

3 “Employer Contributions” shall mean payments made or that are required to be  
4 made to the Fund, including amounts owed but not yet paid . . . . All such  
5 Employer Contributions are, and shall be considered as, plan assets from the date  
6 on which the hours (whether worked or paid) for which the Contributing  
Employer is obligated to pay contributions to the Fund accrue, whether or not  
such Employer Contributions are collected or received by the Fund.

7 IUPAT Industry Pension Fund Restated Agreement and Declaration of Trust, Art. I, Sec.  
8 10.

9 40. Fiduciary Defendants are fiduciaries to the Trust Funds for purposes of ERISA.

10 41. The actions of Fiduciary Defendants in failing to make required contributions to  
11 the Trust Funds materially harmed the Trust Funds, placed the beneficiaries of the Trust Funds at  
12 risk with regard to their benefits and constitute a breach of their respective fiduciary duties to the  
13 Trust Funds and their beneficiaries.

14 42. The Trust Funds are entitled to recover from Fiduciary Defendants a sum equal to  
15 the Renaissance Delinquency in an amount to be proven at trial.

#### 16 **FIFTH CAUSE OF ACTION**

17 [General Contractor Liability – N.R.S. 608.150 – Pellett, Does I-X and Roes I-X]

18 43. Plaintiffs herein restate and reallege the allegations contained in Paragraphs 1  
19 though 42, as though set forth hoc verba.

20 44. Upon information and belief, Renaissance contracted with Pellett and one or more  
21 Doe or Roe Defendants (“General Contractors”) to perform covered labor on various projects  
22 (“Projects”). The General Contractors have received the benefit of the covered labor provided  
23 on their Projects by Renaissance employees, but have not paid the Trust Funds the fringe benefit  
24 contributions owed for said labor. Consistent with Paragraph 13 of this Complaint, Plaintiffs  
25 will seek to amend this Complaint to insert the true identities and capacities of the Doe and Roe  
26 Defendants when the same have been ascertained.



1           45. Pursuant to N.R.S. 608.150, each General Contractor, as the originating or general  
2 contractor for each Project, is liable for the indebtedness of Renaissance owed to the Trust Funds  
3 for covered labor performed on each Project, which indebtedness has not been paid.

4           46. The General Contractors are liable to the same extent as Renaissance, including,  
5 but not limited to, the principal contributions, interest, liquidated damages, attorney's fees, court  
6 costs and audit costs.

7  
8                                   **SIXTH CAUSE OF ACTION**

9                                   [Demand for Relief on Bonds Pursuant to NRS 624.273 – GAIC and Roes I-X]

10           47. Plaintiffs herein restate and reallege the allegations contained in Paragraphs 1  
11 through 46, as though set forth hoc verba.

12           48. GAIC and one or more of the Roe Defendants issued certain licensing, surety  
13 and/or payment performance bonds to Renaissance and the General Contractors (collectively  
14 “Bonds”).

15           49. The Bond proceeds are payable to the Trust Funds in satisfaction of any  
16 Renaissance Delinquency owed to the Trusts for covered labor by Renaissance employees.

17           50. Plaintiffs are intended third party beneficiaries under the Bonds.

18           51. Plaintiffs' claims, as set forth herein, are covered by the Bonds and GAIC and the  
19 Roe Defendants should pay any remaining Bond proceeds to Plaintiffs in partial satisfaction of  
20 the Trust Funds' claims asserted herein.

21                                   **PRAYER FOR RELIEF**

22           WHEREFORE, the Trust Funds pray for Judgment against Defendants, and each of them,  
23 as follows:

24           1. for the Court's Order compelling Defendants to deliver or make available to the  
25 Trust Funds' auditors all project and general contractor specific payroll information and  
26 documents necessary to permit the auditors to complete the Audit;

1           2.       for the Court's Order enjoining Defendants from failing to fully cooperate with  
2 any audits deemed necessary and proper by the Plaintiffs, and failing to timely pay to the Trust  
3 Funds delinquent contribution amounts discovered by the audit;

4           3.       For unpaid fringe benefit contributions in amounts to be proven at trial;

5           4.       For damages for breach of contract and/or breach of fiduciary duty in an amount  
6 to be proven at trial;

7           5.       For liquidated damages in an amount to be proven at trial;

8           6.       For accrued interest on all unpaid contributions and damages from their due dates  
9 until paid in an amount to be proven at trial;

10          7.       For Plaintiffs' audit costs in an amount to be proven at trial;

11          8.       For Plaintiffs' reasonable attorney's fees;

12          9.       For the Plaintiffs' costs of suit incurred herein;

13          10.      For such additional relief as may be provided for by 29 U.S.C. § 1132(g); and

14          11.      For such additional relief as this Court may deem just and proper.

15 Dated this 25th day of June, 2010.

16 CHRISTENSEN JAMES & MARTIN

17  
18 By: /s/ Wesley J. Smith  
19 Wesley J. Smith, Esq.  
20 Nevada Bar No. 11871  
21 7440 W. Sahara Avenue  
22 Las Vegas, Nevada 89117  
23 *Attorneys for Plaintiffs*  
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